85-769

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

No. 85_____
[California 3 Crim. 13335]

EVERETT EUGENE ORUM.

Petitioner,

vs.

CALIFORNIA,

Respondent.

Petition for a Writ of Certiorari
to the Supreme Court of California

DONALD THOMAS BERGERSON
One Haight Street
San Francisco, CA., 94102
Telephone: (415) 621-8149

Attorney for Petitioner,
EVERETT EUGENE ORUM

57 pp

QUESTION PRESENTED

Must law enforcement searches of a parolee be supported by a warrant under the rationale of **Camara v. Municipal Court** 387 U.S. 523 (1967) and **See v. Seattle** 387 U.S. 541 (1967)?

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Petition

Petitioner respectfully requests that this honorable Court issue a writ of certiorari to the Supreme Court of California for the following reasons:

Parties

The parties hereto are EVERETT EUGENE ORUM, Petitioner, and THE PEOPLE OF THE STATE OF CALIFORNIA- Respondent.

Opinions Below

Petitioner, convicted of possessing amphetamine for sale, unlawful transportation of amphetamine, and possession of a weapon by an ex-convict- appealed his conviction to the Court of Appeal of the State of California for the Third Appellate District.

His conviction was affirmed by an unpublished opinion of May 2. 1985, set out in full as Appendix "A" hereto.

Thereafter, the District Court of Appeal denied petitioner's petition for rehearing. Appendix "B".

Thereafter, the Supreme Court of California denied a petition for review on July 16, 1985.

Jurisdictional Statement

Jurisdiction of this Court is conferred by virtue of the following:

1. The final judgment of the Supreme Court of California was entered on July 18, 1985;

2. The question presented here is a substantial Federal constitutional question, duly raised below;

3. Jurisdiction is statutorily

conferred by 18 USC 1257(3).

Constitutional Provisions

Petitioner relies on the Fourth Amendment to the Constitution of the United States which provides that "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

Statement of the Case and Facts

In California, parolees have a "reduced expectation of privacy", [**People v. Mason** 5 Cal. 3d 759, 764

97 Cal. Rptr. 302 (1971)], and are subject to search upon less-than-probable-cause simply by virtue of their parole status.

Pursuant to California's "Determinate Sentence Act", parole is not an act of grace, but is mandatory upon completion of a portion of a fixed penal sentence. Parole is not offered prior to this time, nor can a prisoner refuse to be paroled when parole is made available. Moreover, in California, parole extends for a short, fixed term of uniform length regardless of the commitment-offense. This term is a separate term. and not part of the underlying prison term. **In re Wilson** 30 Cal. 3d 438. 179 Cal. Rptr. 207 (1981).

Petitioner was released from prison in December. 1980 for an offense

unrelated to the present case, and was placed on parole.

At the time of his release, petitioner was informed of certain "conditions" which would attach to his parole. amongst them the condition that he submit to search and seizure by any parole agent or law enforcement officer with or without probable cause. The face of the form on which these conditions were printed contained a place for petitioner's signature. but he refused to sign the form or accept the conditions. Pursuant to the Determinate Sentence parole law, petitioner was released anyway.

On October 16, 1981, police acting on suspicion but without probable cause, searched appellant and his automobile. The police were acting on

a report that appellant had been involved in an armed assault on his in-laws. When appellant was stopped, the woman with appellant was found to possess a gun similar to that described by the assault victims. Although the officers had no real reason to believe that appellant possessed yet another gun, they searched his car trunk for such a weapon. They found narcotics.

The main justification for the trunk search was that appellant was on "searchable parole".

This fact had long been known to an officer McKee. the superior of the two officers who actually searched appellant's car trunk. McKee testified that he had secured advance permission from parole agent Frederick to search appellant, but Frederick denied this at

the hearing. In any case, McKee did not arrive at the search scene until the search had already occurred.

Petitioner's parole agent, Robinson, also testified. Robinson related that he had spoken with sheriffs about the assault case on the afternoon prior to petitioner's arrest. However, all the other evidence showed that the assault occurred around midnight and petitioner was arrested a few hours later. In any event, neither of the officers had been given permission for the search by Robinson. Robinson had not seen petitioner in a while and was not aware of any particular problems with petitioner's adjustment.

Petitioner made bail on the narcotics and assault charges growing

out of this arrest. However, he was rearrested after a search conducted on May 13, 1982. There, McKee relied on a confidential informant who told him of drug-dealing by petitioner. Rather than get a warrant. McKee decided to conduct a "parole search" with parole agents. The premises were searched and drugs were found in a parked station wagon to which appellant had the keys.

Based on the seizures made during the October. 1981 and May. 1982 cases, petitioner was convicted of drug possession by his guilty plea.

ARGUMENT

THE PAROLE AUTHORITY IS AN ADMINISTATIVE AGENCY AND PAROLE SEARCHES REQUIRE A CAMARA-SEE WARRANT.

Introduction

Herein, petitioner argues that

recent decisional, statutory, and worldly changes have transformed California's parole agency from a quasi-judicial extension of the prison system into an independent administrative agency. Petitioner accordingly submits that the rationale of **Camara v. Municipal Court, supra,** 387 U.S. 523 applies to searches carried on by parole agencies or by peace officers acting pursuant to parole-search conditions.

This case is argued with reference to a "California-specific" decisional background. However, the concerns of this petition extend to all jurisdictions which have adopted a "modern" penological approach. and specifically to the increasing number of jurisdictions which sentence prisoners to

determinate sentences.

The Background

Currently. California Courts hold that a parolee has a reduced expectation of privacy, and may be searched as a condition of his parole without warrant or probable cause. **In re Martinez** 1 Cal. 3d 641, 83 Cal. Rptr. 682 (1970).

Several justifications have been offered for this doctrine. The leading justifications are that (1) a parolee "consents" to search conditions. [e.g., **Hernandez v. Superior Court** 110 Cal. App. 3d 355. 366, 185 Cal. Rptr. 127 (1980)]; (2) parolees remain in "constructive custody" subject to appropriate restrictions, [**People v. Hernandez** 229 Cal. App. 3d 143. 150. 40

Cal. Rptr. 100, cert. den., 381 U.S. 953 (1964)]; and (3) parole-searches are necessary to the parole process, [**People v. Britton** 156 Cal. App. 3d 689, 696, modif., 157 Cal. App. 3d 1228c, 1228d. ___Cal. Rptr.___(1984).

Each of these justifications is based on a conception of parole as a quasi-judicial process. Penal and parole were both set by the Adult Authority, [**People v. Superior Court (Syvinski)** 2 Cal. 3d 527. 533. 86 Cal. Rptr. 83 (1970), and a violation of parole put the parolee in his original position of serving a full term (usually life) without a set release date.

Parole was also paternalistic. Here is Mr. Justice Fox in **People v. Denne** 141 Cal. App. 3d 499, 503, 297

P.2d 451 (1956), the first and "classic" parole-search case:

> "[T]he process of rehabilitation takes place under the vigilant and tutelary eye of the parole officer .... [S]ince a breach of faith reposed in [the parolee] may subject him to summary return to the prison confines. the parole officer is accorded broad visitatorial powers over his prisoner .... By accepting the privilege of a parole. a prisoner consents to the broad supervisory and visitatorial powers which his parole officer must exercise over his person and property until the term of his sentence shall have expired or terminated."

Basically, a "prisoner outside the walls". a parolee was given the same rights as a prisoner. Mr. Denne, for example. was not permitted to marry, engage in business, or execute a contract. and had to get permission to rent an apartment, purchase food, hold a job, or obtain Workman's Compensation

or Social Security. **Denne, supra,** 141 Cal. App. 3d at 503.

The only "choice" given to a parolee under the old system was consent to parole itself. Without consent. an inmate could not be paroled against his will. E.g., **In re Peterson** 14 Cal. 2d 82, 84-85, 92 P.2d 890 (1939).

Recently. California and a number of other jurisdictions, including the Federal Courts. have abandoned (or are abandoning) the traditional concept of parole in favor of a more modern version of parole supervision. Under the new regime, parole is mandatory and not consensual. It is not a reward for "good behavior", but is granted to an inmate whether he is ready for release

or not. **See**, gen., **Cal. Penal Code §§** 3000 et. seq..

The change in the sentencing law has been accompanied by a change in the law with regard to the civil rights of prisoners. A review of these changes is not necessary. Suffice it to say that prisoners have gained entitlement to new substantive and procedural rights over the course of two decades.

Also, the "rehabilitative" mission of parole agencies has been limited by budgetary restrictions which have been imposed in recent years.

Thus, the concept of parole, itself, has changed; instead of the "vigilant and tutelary eye of the parole officer", petitioner was supervised by an agent who maintained only attenuated contact. and was unaware of

petitioner's potentially serious problems with law-enforcement.

Petitioner submits that the mission of parole agencies, especially agencies functioning under determinate sentence laws, has changed. The agencies have become those common, useful beasts of burden: administrative agencies. Such agencies have clients, duties, and limits. The parole agency is no longer warden over a metaphorical prison without walls. The parole agencies' clients are, rather, a class of ex-prisoners who are no longer "granted" parole but have parole imposed upon them by virtue of the passage of time. The duty of the "new" parole agency is to periodically inspect the lives of its clients to be

sure that no violations against a set of standards have occurred; however, because most paternalistic restrictions have been lifted, such standards now largely deal with prohibitions against criminal behavior rather than with how a parolee reorients his life towards some affirmative notion of goodness.

It is true that the aim of parole is still rehabilitative, [**see, P.C. § 3000, supra,**], but this is true of most administrative agencies, for example welfare and social security agencies.

Camara Requires
Warrants for Parole-Searches

This Court held in **Camara v. Municipal Court, supra,** 387 U.S. 523, 529-530, 534-538, that administrative searches, even if carried on for public safety purposes require some sort of

warrant. Accomodation, if any, to the regulatory needs of the agency must come from the level of cause required for the warrant, rather than by dispensing with the warrant requirement itself.

The **Camara** line of reasoning was extended to parole searches by **United States v. Bradley** 571 F.2d 787, 789 (4 Cir.. 1978); **see, also. United States v. Workman** 585 F.2d 1205 (4 Cir., 1978)(probation); **Diaz v. Ward** 506 F.Supp. 226, 227 (S.D.N.Y., 1980); **State v. Cullison** 173 N.W.2d 938, cert. den., 398 U.S. 938 (1970); **People v. Easton** 8 Ill. App. 3d 512. 519-520. 289 N.E.2d 673 (1972).

As with **Camara,** the **Bradley** Court conceded the "important governmental interests at stake," [**Bradley** 571 F.2d

at 790], but reasoned that these merely "diminish ... the rigorousness of the standard of cause which the parole officer must satisfy to obtain a warrant, not of removing the judicial protection which the warrant requirement interposes." **Bradley** 571 F.2d at 790. Explaining its position in a later case, the Court noted that extending the warrant requirement to parole searches would cause no more "potential for injury or benefit as its application in other criminal procedure." **United States v. Workman, supra,** 585 F.2d at 1210.

Not all the Circuits have followed **Bradley.** However, rejection of a warrant requirement by the Ninth Circuit, [**Latta v. Fitzharris** 521 F.2d 246 (9 Cir.. 1975)] was based largely

on the outmoded notions about parole. "The overriding goal of the parole system is to give the parolee a chance to further and to demonstrate his rehabilitation while serving a part of his sentence outside the prison walls .... The parole officer ought to know more about the parolee than anyone else but his family .... The principle protection against abuse of this authority [to search] is the "helping" function of the parole officer's job ...." **Latta** 521 F.2d at 249-250.

Latta went on to draw an analogy to the "statutorily regulated industries" exception to the **Camara** warrant requirement.[1/] The analogy is

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1. **See**, e.g., **Donovan v. Dewey** 452 U.S. 594 (1981)(mines); **United States v. Biswell** 406 U.S. 311 (1972) (firearms); **Collonade Catering Corporation v. United States** 297 U.S. 72 (1970)(liquor).

inapposite, however, because the "exception" only applies to consensually regulated industries, [e.g., **Almeida-Sanchez v. United States** 413 U.S. 266, 271 (1973)], while parole release is no longer conditioned on consent and petitioner here did not consent to search conditions.

In short, the realities of today's parole system militate against exempting parole authorities from the warrant requirements imposed on them by **Camara** and **See.**

Nor should they be exempted. Numerous problems are fostered by the current, warrantless parole scheme.

In California, for example, the paucity of parole-search litigation has produced nebulous and varying standards

with regard to what search-and-seizure rights parolees do have. Some cases have hald that a parolee must have done something indicative of criminal activity, [e.g., **People v. Guerrero** 85 Cal. App. 3d 572. 149 Cal. Rptr. 555 (1979)], while others allow officers to act even without suspicion. **People v. Howard** 79 Cal. App. 3d 46, 49, 143 Cal. Rptr. 342 (1978). So long as there is no uniformity, standards will be set on an ad-hoc basis by searching officers themselves. A warrant requirement, which would produce a common-law of uniform search standards, would alleviate this problem. **See, Latta v. Fitzharris, supra,** 521 F.2d at 435,

Rufstadler, J., dissenting.[2/]

To these "negative" benefits are added some "positive" ones.

The precision required of officers filling out a warrant application would clarify search aims. Warrants would forestall most courtroom challenges to seizures. **See, gen., United States v. Leon** 468 U.S.___(1984). Finally, a warrant procedure would repose search authorization in the hands of neutral magistrates which are a part of the same system which will impose criminal

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2. Then, too, the current standardless system encourages parolees to "gamble" with criminality because the eventuality of a search is too capricious to be planned either for or against. It discourages communication between parolee and parole agent because a search may result. Finally, a slapdash system discourages respect amongst parolees,--amongst the most legally sophisticated of citizens,--for the law.

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sanctions based on the fruits of the search. To place "under one roof" all aspects of the search-charging-sentencing process will restore much of the coherence lost when the old parole system was hacked up to make way for the Determinate Sentence system.

None of this will interfere with the residual "rehabilitative" functions of parole, itself. Unlawfully seized evidence will still be admissible at parole revocation hearings, and a warrant requirement will thus not impede the revocation process. More generally, **Camara** and **See** do not apply to such activities as home-visitation, [cf., **Wyman v. James** 400 U.S. 309 (1971)], during which visits agents could ascertain facts which might later

ad them to seek a warrant. Nothing
a warrant requirement would prevent
role officers from conveying their
spicions about a parolee to police.
r would a parole agent be prevented
om arresting his parolee as an
sconder or for other non-search-based
arole violations.

Parolees, even under the "new"
arole regime are subjected to greater
crutiny than are ordinary citizens.
eir crimes, no less conspicuous than
e crimes of others, will not go
ndetected if a warrant is required.
l that will va if a warrant is
equired is the potential for police
use based on the mere parole status
a man who has served his time.

Such an abuse occurred here.
ithout exigency. police on one

ccasion invaded the trunk of etitioner's car and on another ccasion invaded his home. On the irst occasion. the officers had other ause to arrest petitioner and the earch was gratuitous. On the second ccasion, the officers had plenty of ime to obtain a warrant before they taged their raid on petitioner's remises.

These sorts of constitutional iolations are enjoined by **Camara, See,** nd progency. This Court should grant his petition in order to clarify the aw in this regard, to resolve the onflict between the circuits. and to nsure that petitioner's constitutional

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ghts are vindicated.

DATED: September 16, 1985

Respectfully Submitted:

_____

DONALD THOMAS BERGERSON,
Attorney for Petitioner,
EVERETT EUGENE ORUM

APPENDIX "A"

Opinion Below

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, THE THIRD APPELLATE DISTRICT

(SACRAMENTO)

Not to be Published

3 Crim. 13335

THE PEOPLE, Plaintiff and Respondent,

vs.

EVERETT EUGENE ORUM, Defendant and Appellant.

Following a search of his automobile and person on October 17, 1981, an information was filed charging defendant with the unlawful possession of a hnadgun

by one previously convicted of a felony (Pen. Code, § 12021 - count I), two counts of assault with a deadly weapon (Pen. Code, § 245 subd. (a) - counts II & III), possession of amphetamine for sale (Health & Saf. Code, § 11378 - count IV), and with the unlawful transportation of methamphetamine (Health & Saf. Code, § 11379 - count V). Three prior convictions were also alleged (Pen. Code, § 667.5, subd. (b)).

Before these charges were resolved a second search conducted at defendant's residence on May 13, 1982, resulted in the filing of a second information charging defendant with possession of amphetamine for sale (Health & Saf. Code, § 11378).

Following the granting of the

People's motion to consolidate the informations and the denial of defendant's motion to suppress evidence (Pen. Code, § 1538.5), defendant entered a negotiated plea to being an ex-felon in possession of a handgun, to the unlawful transportation of methamphetamine, and to possession of amphetamine for sale. He also admitted two of the three alleged priors.

Sentenced to state prison, defendant appeals contending: (1) none of the searches can be sustained under the parole search doctrine; and (2) the accelerated booking search was unlawful. We reject these contentions and shall affirm the judgment.

FACTS

On October 16, 1981, at

approximately 11 p.m., Deputies William Myers and Terry Moore responded to the residence of Dale Martin. There they were told by Martin that defendant had struck Martin's wife on the head with a .357 caliber revolver while in a local bar. Martin described defendant to the deputies and told them he drove a yellow M.G. and that he frequented the Ivanhoe and Country Squire bars. Martin's brother told Deputy Myers that defendant had served time in prison for possession of heroin and stolen guns and that he had heard defendant was presently dealing in drugs.

Failing to locate defendant at the two bars, the deputies radioed for additional information from their records

section. Lieutenant Easton, who overheard the request, met with the deputies in the field. and informed them defendant had served five years for a drug conviction, that his prior conviction resulted from dealing drugs from the trunk of his car, that he was known to carry a weapon in his waistband, and that he should be on searchable parole.

Around 2 a.m., the deputies saw defendant's M.G. at the Ivanhoe bar. Defendant and a female, later identified as Sally DeLouize, exited the bar and entered a stationwagon parked behind the M.G. Defendant got out of the station-wagon, went to the M.G., and made a motion as though he were removing something from his waistband and placed

it in the M.G. He was then joined by DeLouize in the M.G. After she momentarily returned to the stationwagon, the two drove off in the M.G. with the deputies following.

The deputies stopped the M.G. and conducted a pat down search of defendant but no weapon was found. Defendant and DeLouize were each placed in the back of separate patrol cars. DeLouize gave Deputy Myers permission to obtain her identification from her purse in the car. Inside the purse Myers found a .38 revolver, but he did not believe this to be the weapon used in the assault. Deputy Myers told defendant he was aware that defendant was on searchable parole, which defendant confirmed but refused to give

his consent to a search of the car.

Based upon his belief that the weapon used in the assault was still missing and due to the information that defendant was dealing drugs from his car, Deputy Myers searched the M.G. In the trunk he found an ice chest and a black box, each being large enough to contain a gun. Inside the ice chest he found contraband. A search of defendant revealed $260 cash, a small green vial, and a small spoon on a chain.

In early May 1982, Deputy Richard McKee received information that defendant was again dealing in methamphetamine and that he was using an older stationwagon to get the drugs. When McKee gave this informationto Agent William Frederick of the Department of Corrections, the latter

verified defendant's parole status and requested McKee to assist him in a parole search of defendant's residence.

Prior to the search, which was conducted on May 13, depurty McKee had on both May 7 and 10 observed a red stationwagon parked in the driveway. At the time of the search the red stationwagon was parked in front of the residence.

Although a search of the residence disclosed no contraband, a set of keys were discovered in a bedroom used by defendant. When defendant was asked for the keys to the red stationwagon he denied any knowledge about the vehicle other than a Mr. Burdall had left it there the previous night. Agent

Frederick discovered that one of the keys fit the red stationwagon, opened it and found drugs beneath the driver's seat.

DISCUSSION

Defendant first contends the roadside search of his person and M.G. on October 17 was unlawful because (1) it was not conducted by his parole agent and the record is unclear as to what his conditions of parole were; and (2) there was insufficient reason to conduct the search even under the theory of a parole search.

Initially we note the well established rule governing motions to suppress evidence under Penal Code section 1538.5: "In such a proceeding the power to judge the credibility of the witness, resolve any conflicts in the

testimony, weigh the evidence and draw factual inferences, is vested in the trial court. On appeal all presumptions favor the exercise of that power and the trial court's findings on such matters, whether express or implied, must be upheld if they are supported by substantial evidence." (People v. Lawler (1973) 9 Cal. 3d 156, 160). Moreover, where a parolee is subject to search conditions, a parole search may be founded on ""any report or suspicion or belief of continued misconduct" reasonably suggestive of criminal activity and is legal as long as the search is not for the purpose of harassment." (Hernandez v. Superior Court (1980) 110 Cal. App. 3d 355, 366.)

Here, defendant admitted to the officers tha he was on searchable parole. Defendant's notice of parole containing the conditions of parole was introduced into evidence at the suppression hearing. Under the terms of his parole, defendant and his "residence and any property under [his] control may be searched without a warrant at any time by any agent of the Department of Corrections or any law enforcement officer." (See Cal. Admin. Code. tit. 15, § 2511, subd. (b) 4.)

Relying on People v. Coffman (1969) 2 Cal. App. 3d 681. Hernandez v. Superior Court, supra, 110 Cal. App. 3d 355, and People v. Natale (1978) 77 Cal. App. 3d 568, defendant argues that none of the searches can be upheld under the parole search doctrine because they were mere

pretexts for police activity unrelated to parole supervision. Natale held that when the conditions of parole do not include a search by any law enforcement officer, the parole officer may not act merely as a "stalking horse" for the police. (77 Cal. App. 3d at p. 573-574). Since defendant's parole conditions included a condition of seach by any law enforcement officer, there is no requirement that the search be conducted by defendant's parole officer. "The purpose of the search, not the physical presence of a parole agent, is the vital element." (People v. Coffman, supra, 2 Cal. App. 3d at p. 688). Coffman condemened a search conducted by a parole agent acting solely as a "front" for the

police. But as we later noted, "Coffman is inapposite to a situation where the parolee has agreed to a search by "any law enforcement officer."" (Hernandez v. Sueprior Court. supra. 110 Cal. App. 3d at p. 366.) Defendant retorts that he did not consent to a search by any law enforcement officers. That, as it turns out, is irrelevant. Parole conditions "are not a contract but are the specific rules governing all parolees whether or not the parolee has signed the form containing the parole conditions." (Cal. Admin. Code, tit. 15, § 2512.) As we shall explain, consent to a parole search condition is not a necessary predicate for a valid parole search. The doctrinal foundations of warrantless parole searches were recently reexamined

in light of the enactment of the Determinate Sentencing Act (Stas. 1977, ch. 1139), and were found to have continuing validity under the theories of constructive custody and the legitimate demands of the parole process. (People v. Britton (1984) 156 Cal. App. 3d 689, 693-697, mod. 157 Cal. App. 3d 1228c.) Whether or not the consent theory is still viable, "another theory of justifying warrantless parole searches--administrative needs of the parole process--retains its validity." (Id., at p. 696.) The searches in this case were reasonable ones justified by the legitimate demands of the parole process. Since the officers had been informed that defendant had committed a felony assault

with a gun, and because they were unable to find he gun on defendant's person or in the interior of his car, and because they had also been told that defendant's prior conviction was drug related and that he was presently dealing in drugs, it cannot reasonably be contended that the search of the trunk was made either for the purpose of harassment or without sufficient cause.

Relying on People v. Laiwa (1983) 34 Cal. 3d 711, defendant also urges that the vial containing amphetamine found on his person following his arrest must be suppressed as it was the result of a prohibited "accelerated booking search." The claim is founded upon the following testimony of Officer Myers given in response to questions by the prosecutor:

"Q. Did you do a prebooking search at that time? A. Yes. Q. What did yo find, if anything? A. A large amount of cash, two hundred sixty some odd dollars, I believe was on his person, and a small green vial with a black lid . . . ."

In Laiwa the arresting officer testified that at the site of the arrest he searched defnedant's tote bag "for inventory purposes." (Id. at p. 715.) The Court held that searches at the scene of the arrest made for inventory or jail safety purposes, which it termed "accelerated booking searches" or "booking searches", were unconstitutional. (Id., at pp. 724-728.) While it is true Deputy Myers responded affirmatively when asked if he did a "prebooking search" the

use of the term "prebooking search" does not in-and-of-itself mean that he was conducting a search for inventory or jail safety purposes. Unlike the officer in Laiwa, Deputy Myers never expressly testified as to his purpose when he searched defendant; nor was he ever asked. Simply stated the term "prebooking search" does not necessarily mean anything other than a search which preceeded the booking of the defendant. Indeed, given that he had just found drugs in the trunk of defendant's car it is obvious that officer Myers was searching defendant for additional evidence--a purpose specifically approved in Laiwa. (Id., at p. 727).

Defendant also contends the officers impermissibly extended the scope of an

otherwise proper search on May 13 by searching the stationwagon in front of his residence. This is so, he argues, because the red stationwagon turned out to belong to Ted Berdahl, who was not a cotenant," and defendant had so informed the officers prior to the search. Ownership of the car was not the critical point upon which the validity of the search turned. The point was wehtehr or not the officers had sufficient reason to believe defendant was in "possession" of the vehicle. (Hernandez v. Superior Court. supra, 110 Cal. App., 3d at p. 367.) Deputy McKee's testimony that he had seen the vehicle in defendant's driveway on May 7 and 10, and that it was present on May 13 with defendant in

possession of the car keys was sufficient evidence to establish defendant's possession of the vehicle.

Defendant contends that due to the enactment of the Determinate Sentencing Act parole searches require an administrative warrant. The basis for this extravagent claim is is assertion that the doctrine of custodia legis no longer applies and that the "Department [of Corrections] and its Board have become [] that common and useful beast of burden: an adminstrative agency."

Defendant's argument is as follows: Prior to the enactment of the Determinate Sentence Act a parolee was serving the remainder of his sentence outside of prison. After the Determinate Sentence Act became effective parole was no longer

a matter of clemency but was imposed as a separate term. "It is thus incorrect to say that the parolee is serving the balance of his prison time "outside the walls"." Therefore, so the argument goes, the defendant was not in custodia legis of the Department of Corrections at the time of the searches.

While it is true that the parole period now imposed constitutes a term separate from the original imprisonment (In re Wilson (1981) 30 Cal. 3d 438, 442), it is also still true under the Determinate Sentence Act that "an inmate is not "discharged from custody" until "his successful completion of parole ...."" In re Caudillo (1980) 26 Cal. 3d 623, 636, citing Penal Code section 3000,

subdivision (a)). Further, Penal Code section 3056 states: "Prisoners on parole shall remain under the legal custody of the department and shall be subject at any time to be taken back within the inclosure of the prison." In the face of such authority, defendant's contention that the doctrine of custodia legis is no longer viable must be rejected.

In support of his claim that the Department of Corrections is an administrative agency, therefore requiring an administrative warrant for the search of its parolees, defendant relies on Camara v. Municiapl Court (1967) 387 U.S. 523 [18 L.Ed.2d 930, and See v. Seattle (1967) 387 U.S. 541 [18 L.Ed.2d 943]. Camara prohibited

warrantless searches of residences by a governmental agency charged with enforcement of housing code resrictions. See prohibited warrantless searches of businesses for fire safety violations by the Seattle Fire Department. Neither case is on point since the respective defendants in those cases were not parolees subject to reduced expectations of privacy. This same contention was rejected by the Britton court: "The frustration of the purpose of requiring public health inspectors to obtain warrants before searching private residences does not come close to the frustration of purpose which would occur if when performing their duties parole officers were required to obtain search

warrants before searching a parolee's residence. The legitimate demands of the parole process (discovery of parole violations, supervision of the parolee, checking the parolee's progress toward rehabilitation and protection of the public can best be met by allowing a parole officer to conduct a reasonable parole search without the need of obtaining a warrant." (People v. Britton. supra, 156 Cal. App. 3d 696, mod. 157 Cal. App. 3d 1228c, 1228d.)

What is on point is Penal Code section 3000, enacted as part of the Determinate Sentence Act, which provides in part: "The Legislature finds and declares that the period immediately following incarceration is critical to successfl reintegration of the offender

into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees and to provide educational, vocational, family and personal counselling necessary to assist parolees in the transition between imprisonment and discharge." As the Britton court noted, a necessary condition for the carrying out of this mandate is the warrantless parole search.

The judgment is affirmed.

SPARKS, J. We concur: EVANS. Acting P.J., RYAN, J*

APPENDIX "B"

COURT OF APPEAL OF CALIFORNIA

THIRD APPELLATE DISTRICT

Petition for Rehearing Denied. DATED:
ay 31. 1985.

APPENDIX "C"

N THE SUPREME COURT OF THE STATE OF
ALIFORNIA; 3 Crim. 13335. Petition
or Review Denied. DATED: July 18,
985. Bird, C.J.

No. 85-769

IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1985

COPY
Supreme Court, U.S.
FILED
JAN 18 1986
JOSEPH F. SPANIOL, JR.
CLERK

EVERETT EUGENE ORUM,

Petitioner,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
THIRD APPELLATE DISTRICT

BRIEF OF RESPONDENT IN OPPOSITION

JOHN K. VAN DE KAMP
Attorney General of
the State of California
STEVE WHITE
Chief Assistant Attorney
General - Criminal Division
ARNOLD O. OVEROYE
Assistant Attorney General
GARRICK W. CHOCK
Deputy Attorney General
JOEL E. CAREY
Supervising Deputy Attorney
General
1515 K Street, Suite 511
Post Office Box 944255
Sacramento, California 94244-2550
Telephone: (916) 324-5247

Attorneys for Respondent

45pp

QUESTION PRESENTED

Must searches of a parolee's person, property, or residence be conducted pursuant to a search warrant under the rationale of Camara v. Municipal Court (1967) 387 U.S. 523, and See v. Seattle (1967) 387 U.S. 541?

* * * * * *

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No. 85-769

IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1985

EVERETT EUGENE ORUM,

Petitioner,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
THIRD APPELLATE DISTRICT

BRIEF OF RESPONDENT IN OPPOSITION

OPINION BELOW

On May 2, 1985, the California Court of Appeal, Third Appellate District (No. 3 Crim. 13335), affirmed petitioner's conviction for possessing methamphetamine for

sale, unlawful transportation of methamphetamine, and possession of a handgun by an ex-convict. The text of this unpublished opinion appears as Appendix A hereto.

JURISDICTION

Petitioner invokes jurisdiction of the Court under 28 United States Code, section 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

Petitioner relies on the Fourth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

A. Proceedings in the State Court

On November 30, 1981, the District Attorney of Sacramento County, State of California, filed information number 61986 in the Superior Court charging petitioner, EVERETT EUGENE ORUM, as follows:

Count One - Unlawful possession of a handgun by an ex-felon (Cal. Pen. Code, § 12021);

Count Two - Assault with a deadly weapon upon Dorothy Martin, personal use of a firearm during its commission, and infliction of great bodily injury (Cal. Pen. Code, §§ 245(a), 12022.5, 12022.7);

Count Three - Assault with a deadly weapon upon Dale Martin, and use of a firearm during its commission;

Count Four - Unlawful possession of methamphetamine for sale (Cal. Health & Saf. Code, § 11378);

Count Five - Unlawful transportation of methamphetamine (Cal. Health & Saf. Code, § 11379).

It was also alleged that petitioner had suffered three prior felony convictions and had served separate prison terms for each

conviction (Cal. Pen. Code, § 667.5(b)) (CT 92-95). [1]

On December 1, 1981, petitioner entered a not guilty plea to each count and denied each prior felony conviction (CT 97).

On December 28, 1982, [2] the court granted the prosecutor's motion to consolidate information number 63503 (one count of unlawful possession of a controlled substance for sale (Cal. Health & Saf. Code, § 11378) with three prior felony convictions) with information number 61986 (CT 118).

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1. The designation "CT" refers to the Clerk's Transcript on Appeal filed by the Clerk of Sacramento County in the California Court of Appeal, Third Appellate District, pursuant to petitioner's appeal of his convictions in that court. A copy of this transcript will be lodged with this Court under separate cover.

2. Trial was continued repeatedly on appellant's motion and waiver of his right to speedy trial (CT 99-101, 103-105, 107, 109-110).

On March 3, 1983, petitioner filed a motion to suppress evidence (CT 144).

On April 22, 1983, the motion to suppress evidence was denied after an evidentiary hearing (CT 171).

On September 13, 1983, petitioner withdrew his pleas of not guilty and entered a guilty plea to counts one (ex-felon in possession of a handgun) and five (transporting methamphetamine) of information number 61986, and count one (possession of methamphetamine for sale) of information number 63503. Petitioner also admitted two of the three prior convictions alleged in information number 61986. Counts two, three (assault with a deadly weapon) and four (possession of methamphetamine for sale) with attendant firearm use and great bodily injury allegations, and one prior felony conviction of information number 61986 were later dismissed. The three prior convictions

alleged in information number 63053 were also later dismissed. Pending prosecutions in Yolo and Sacramento Counties (Cal. Pen. Code, § 666, petty theft with a prior petty theft), were also to be dismissed (CT 206; RT 105-107, 110-113). 3/

On October 11, 1983, the court sentenced petitioner to state prison on count five (No. 61986, transporting methamphetamine) for the upper term of four years. Consecutive sentences for count one (No. 61986, ex-felon in possession of a handgun) of eight months, and for count one (No. 63503, possession of methamphetamine for sale) of eight months were also imposed. One year for each of the admitted two prior

---

3. The designation "RT" represents the Reporter's Transcript on Appeal filed by the Sacramento County Clerk in the Court of Appeal, Third Appellate District, pursuant to petitioner's appeal of his convictions in that court. A copy of this transcript will be lodged with this Court under separate cover.

felony convictions was ordered consecutive to the sentences imposed. Petitioner was given 450 days credit (CT 208-209).

On December 12, 1983, a notice of appeal was filed in the California Court of Appeal, Third Appellate District (CT 27).

On May 2, 1985, petitioner's conviction was affirmed by the California Court of Appeal, Third Appellate District (Append. A).

On May 31, 1985, a petition for rehearing was denied by the Court of Appeal (Petn., Append. B).

On July 18, 1985, a petition for review was denied by the California Supreme Court (Petn., Append. C).

B. Statement of Facts

Sacramento County Deputy Sheriffs William Myers and Terry Moore arrived at a residence on Tannant Way in Rancho Cordova at about 11 p.m. on October 16, 1981, to

investigate a reported assault. Dale Martin told Deputy Moore that petitioner, Everett Eugene Orum, had hit his wife on her head with a .357 caliber revolver while they were in a local bar. Martin gave petitioner's description to the deputy, told him that petitioner drove a yellow "M.G." car, and that he was a regular customer of the Ivanhoe and Country Squire bars (RT 4-5, 16). Dale Martin's brother told Deputy Myers that petitioner was presently dealing in drugs (RT 17-19).

The deputies left and went to the two bars in search of petitioner, but they did not find him. The deputies requested the "records section" for further information on petitioner. Lieutenant Easton arrived at the deputies' location somewhere on Folsom Boulevard in Rancho Cordova and told the deputies that petitioner had been sent to prison five years earlier following a drug

conviction. Lieutenant Easton also told them that petitioner's prior conviction resulted from his dealing drugs out of his car trunk, and that he was known to carry a weapon in his waistband (RT 20-21).

The deputies then drove around looking for petitioner. They found his "M.G." parked in front of the Ivanhoe Bar. They parked down the street from it and requested cover units. At about 2 a.m. petitioner and a woman walked out of the bar. Both of them got into a station wagon parked behind the "M.G." Petitioner got out of the station wagon, walked up to the driver's side of the "M.G.," and made a motion as if he were removing something from his waistband and placed it into the "M.G." Petitioner got into the car and the lady joined him. She got out shortly thereafter, went back to the station wagon for a few moments, then returned to the "M.G." Petitioner then

drove off. Deputy Myers followed and stopped them to arrest petitioner for the reported assault (RT 7-10).

Petitioner was told he was under arrest when he was taken from his car. He was pat-searched for a weapon and none was found. He was then handcuffed and placed into a patrol car. The female passenger was also handcuffed and placed in a separate patrol car. She gave Deputy Myers permission to get her identification papers out of her purse that was in the "M.G." Deputy Myers found a .38 special revolver in her purse. This revolver did not fit the description of the gun used in the attack on Mrs. Martin. Deputy Myers told petitioner that he knew that petitioner was on searchable parole and requested permission to search the car. Petitioner acknowledged that he was on searchable parole, but refused to give his consent (RT 10-13, 15).

Deputy Myers searched the car because the handgun used in the assault was missing, and because of information that petitioner was dealing in drugs, probably out of his car trunk as he had done before. Deputy Myers found a set of small scales, "like from weighing marijuana," in the front of the car. He found an ice chest and black box inside the car trunk. Each was large enough to have contained the missing revolver. He opened the ice chest and found white powder in plastic bags, and packages of small white pills. The black box contained a powder mixing agent and packaging bags (RT 12-14, 27, 29). Appellant was then searched. Deputy Myers found $260 cash, a small green vial, and a small spoon on a chain (RT 160).

Sometime in early May 1982, Sacramento County Sheriff's Deputy Richard McKee received information that petitioner was dealing in methamphetamine, and that he

was using an older station wagon to drive to Antioch to get the drugs (RT 37, 45, 50). Deputy McKee called Department of Corrections Agent William Frederick and told him of the reported resumption of drug dealing by petitioner. Agent Frederick verified petitioner's parole status and found out from petitioner's parole officer that petitioner lived at 2100 Allison Way with his girlfriend. Agent Frederick requested Deputy McKee to assist him in a parole search of petitioner and that residence on May 13, 1982 (RT 37, 75, 77, 88-89).

Deputy McKee drove to 2100 Allison Way on May 7th. He saw a red Chevrolet station wagon parked on the driveway and a brown station wagon on the street (RT 40, 51). On May 10th, he saw the red Chevrolet station wagon parked on the driveway. Both cars were parked in front when he went to that address on May 13th for the parole

search. Four Department of Corrections agents and three deputy sheriffs made up the search team (RT 38, 40). Sally DeLouize answered Agent Frederick's knock on the door. Petitioner was located in the garage (RT 38-39). The kitchen was searched first and scales were found there (RT 58). They searched a bedroom that Sally told the officers petitioner used for sleeping (RT 60). They found a key ring with seven keys, petitioner's eyeglasses, and men's toiletries on a dresser bureau. Petitioner's wallet was found in the top drawer of the dresser (RT 39, 60). When asked for the keys to the red Chevrolet station wagon, [4] petitioner said he had nothing to do with that car and that someone else had left it there the night before. Agent Frederick had been informed by petitioner's parole agent

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4. Sally had claimed earlier that the brown station wagon was her car (RT 56).

that petitioner drove an "orange-colored" car (RT 59, 90-91, 99). Agent Frederick found that one of the seven keys on the key ring found on the dresser fit the driver's locked door of the red Chevrolet station wagon. He unlocked the door and found suspected drugs under the driver's seat (RT 86-87).

* * * * * *

SUMMARY OF ARGUMENT

The petition for writ of certiorari should be denied. California, in enacting the Determinate Sentence Law of 1976, did not retreat from the traditional concept that a parolee is in constructive custody and thus subject to warrantless searches by a parole agent. The new law declared California's concern that public safety requires the close supervision of its parolees.

The administrative search warrant requirements of Camara - See are not applicable because a parolee is in the constructive custody of the California Department of Corrections, and thus cannot be deemed to stand in the shoes of a citizen homeowner as in Camara. (Latta v. Fitzharris (9th Cir. 1975) 521 F.2d 246 (en banc), cert. den. 423 U.S. 897 (1975).)

* * * * * *

ARGUMENT

WARRANTLESS SEARCHES CONDUCTED BY PAROLE OFFICERS IN PERFORMANCE OF THEIR DUTIES DO NOT VIOLATE THE FOURTH AMENDMENT

Petitioner contends that recent decisional, statutory, and worldly changes have transformed California's parole agency from a quasi-judicial extension of the prison system into an administrative agency subject to the requirement of an administrative search warrant under Camara v. Municipal Court (1967) 387 U.S. 523, and See v. Seattle (1967) 387 U.S. 541. He argues that California's enactment of the Determinate Sentence Law (Calif. Stats. 1976, ch. 1139) [5/] reflects this alleged change because no longer is a state prisoner granted parole as a matter of grace, thereby remaining in custodia legis, but rather is granted parole

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5. For a discussion of the Determinate Sentence Law of 1976, see Note, Determinate Sentencing in California, 9 Pacific Law Journal, 1978.

as a matter of right after having served a determinate term. Respondent respectfully submits that these contentions must be rejected.

The traditional view of a parolee's Fourth Amendment rights is summarized in the case of People v. Hernandez (1964) 229 Cal.App.2d 143, 150.

> "For the purpose of maintaining the restraints and social safeguards accompanying the parolee's status, the authorities may subject him, his home and his effects to such constant or occasional inspection and search as may seem advisable to them. . . . He may not assert [Fourth Amendment] guaranties against the correctional authorities who supervise him on parole. . . . If this constitutional fact strips him of constitutional protection

against invasions of privacy by his parole officer, the answer is that he has at least as much protection as he had within prison walls. He did not possess this guaranty in prison and it was not restored to him when the gates of parole opened."

A state prisoner released on parole under the provisions of the Determinate Sentence Law remains under the "constructive custody" of the California Department of Corrections. There was no change in the parolee's status. California Penal Code section 3000 provides in part:

"The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the

interest of public safety for the state to provide for the supervision of and surveillance of parolees and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. . . ."6/

The "discharge" refers to the parolee's discharge from the custody of the Department of Corrections. Subdivision (d) of Penal Code section 3000 provides in part:

"Upon successful completion of parole, or at the end of the maximum statutory period of parole . . . the inmate shall be discharged from custody . . . ."

Furthermore, in enacting the Determinate Sentence Law, the Legislature left intact

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6. See Appendix B for the complete text of the section.

California Penal Code section 3056, which provides:

> "Prisoners on parole shall remain under the legal custody of the department and shall be subject at any time to be taken back within the inclosure of the prison."

California Penal Code section 3053 provides that:

> "The Board of Prison Terms upon granting any parole to any prisoner may also impose on the parole such conditions as it may deem proper."

Pursuant to this legislative mandate, and in fulfillment of the Legislature's findings as expressed in Penal Code section 3000, quoted above, the Board of Prison Terms, has adopted regulations regarding conditions of parole. (See Apendix C.) Thus, California Administrative Code, Title 15, section 2511, paragraph 4, provides:

"Search. You and your residence and any property under your control may be searched without a warrant at any time by any agent of the Department of Corrections or any law enforcement officer." 7/

The parole conditions are not a contract but are rules governing all parolees whether or not the parolee has signed the form containing the parole conditions. See Appendix E, California Administrative Code, Title 15, section 2512. 8/ Thus, California has not retreated from the traditional concept of parole, that is, that the parolee is in constructive custody and subject to close parole supervision. (See People v. Britton (1984) 156 Cal.App.3d 689.)

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7. See Appendix D for the complete text.

8. In United States v. Jarrad (9th Cir. 1984) 754 F.2d 1451, 1452-1453, the court held that the parolee's consent to a warrantless search is not necessary.

In Latta v. Fitzharris (9th Cir. 1975) 521 F.2d 246 (en banc), cert. denied, 423 U.S. 897 (1975), the court, with three judges dissenting, rejected a parolee's contention that a parole officer must obtain a search warrant before searching his property and residence. The court considered the relationship between the parole officer and the parolee to be a special one:

> "We find it to be sui generis so far as the warrant requirement is concerned. For that reason, we conclude that the propriety of warrantless searches by parole officers pursuant to proper conditions affixed to the status of parole cannot be determined by automatic reference to the law of ordinary search and seizure or to that of administrative searches. It follows that, although the law

relating to both ordinary and administrative searches provides some raw material to be considered in framing rules pertaining to parole searches, such searches must be governed by unique, separate, and distinct rules." (Latta v. Fitzharris, supra, 521 F.2d at pp. 250-251.)

The court considered this Court's decisions in United States v. Biswell (1972) 406 U.S. 311, Colonnade Catering Corp. v. U.S. (1970) 397 U.S. 72, and Wyman v. James (1971) 400 U.S. 309, and concluded that:

"There appear to be several justifications for not requiring a warrant in the foregoing cases. One is the pervasiveness of the regulation to which the person or premises to be searched is subject. As we have seen, the authority of the parole officer is pervasive

indeed. Another is the presence of express statutory authorization for a warrantless search. There is no such express statue here, but there is long standing judicial authority in California, and we can perceive no constitutional reason for failing to give weight to that authority. Another is the extent to which a justified expectation of privacy is present. In the case of a parolee, that expectation is severely diminished. Another is the necessity for unannounced and frequent searches, which certainly applies to the parole officer-parolee relationship." (Latta v. Fitzharris, supra, 521 F.2d at p. 251.)

In addition to the long standing judicial authority of California for

warrantless parole searches, the California Legislature, in enacting the Determinate Sentence Law, declared that parolees are to be closely supervised, and that the Board of Prison Terms may impose proper parole conditions.

In United States v. Bradley (2nd Cir. 1978) 571 F.2d 787, the court rejected Latta v. Fitzharris, supra, and held that a parole search must be conducted under a search warrant pursuant to Camara v. Municipal Court, supra. In Camara, this Court held that a city health official, charged with the duty of inspecting residences to ensure compliance with minimum housing standards, must obtain a search warrant where the homeowner refused entry. The Bradley court concluded:

> "While parole searches may indeed be analogous to administrative searches in that the governmental

interest in supervision is great and the parolee's privacy interest is diminished by the fact of constructive custody, nevertheless there is no statutory authorization or guidelines, state or federal, to bring the instant case within the Biswell-Colonnade exception." (United States v. Bradley, supra, 571 F.2d at p. 789.)

California has statutorily provided that a parolee is to be closely supervised and that the Board of Prison Terms may impose parole conditions as it may deem proper. 9/ Thus, the Bradley court's objection is not applicable to California. Furthermore, a convicted drug dealer released on closely supervised parole, such as petitioner, simply

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9. Petitioner was paroled following imprisonment for selling drugs. Thus, a warrantless search condition of parole was properly imposed. (See People v. Mason (1971) 5 Cal.3d 759, 764.)

cannot be deemed to stand in the same shoes as the homeowner in a Camara situation. To require a parole agent to obtain a search warrant would unduly "frustrate the purposes of the search and of the regulatory scheme of which is was a part." (Latta v. Fitzharris, supra, 521 F.2d at p. 251.) [10/] Thus, the warrantless search of petitioner's residence and car on May 13, 1982, by the parole officers was lawful. [11/]

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10. The parolee is not left to the unbridled whims of his parole agent because harassing or oppressive parole searches are subject to judicial scrutiny. (Latta v. Fitzharris, supra, at p. 248, 252; see also Hernandez v. Superior Court (1980) 110 Cal.App.3d 355, 366.)

11. Drugs were found in a closed container in the trunk of petitioner's car following his arrest for assault with a deadly weapon in the October 1981 incident. The search was made because the peace officer believed that the assault handgun was in petitioner's car, and because petitioner had a warrantless search condition by any law enforcement officer (RT 12-13). Since the warrantless search of the car for an instrument of the crime was proper under United States v. Ross (1982) 456 U.S. 798, petitioner's request that this Court examine the condition for a warrantless search of a parolee by any peace officer should be denied.

CONCLUSION

For the foregoing reasons, respondent respectfully requests that the petition for writ of certiorari be denied.

JOHN K. VAN DE KAMP
Attorney General of
the State of California
STEVE WHITE
Chief Assistant Attorney
General - Criminal Division
ARNOLD O. OVEROYE
Assistant Attorney General
GARRICK W. CHOCK
Deputy Attorney General

JOEL E. CAREY
Supervising Deputy Attorney
General

Attorneys for Respondent

APPENDIX A

COURT OF APPEAL
THIRD APPELLATE DISTRICT
FILED MAY 2, 1985
Willfried J. Kramer, Clerk
By _____, Deputy

NOT TO BE PUBLISHED
IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
THE THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,	
Plaintiff and Respondent,	3 Crim. 13335
v.	(Superior Court No. 61986)
EVERETT EUGENE ORUM,	
Defendant and Appellant.	

Following a search of his automobile and person on October 17, 1981, an information was filed charging defendant with the unlawful possession of a handgun by one previously convicted of a felony (Pen. Code, § 12021 - count I), two counts of assault with a deadly weapon (Pen. Code, § 245, subd. (a) - counts II & III), possession of

amphetamine for sale (Health & Saf. Code, § 11378 - count IV), and with the unlawful transportation of methamphetamine (Health & Saf. Code, § 11379 - count V). Three prior convictions were also alleged (Pen. Code, § 667.5. subd. (b)).

Before these charges were resolved a second search, conducted at defendant's residence on May 13, 1982, resulted in the filing of a second information charging defendant with possession of amphetamine for sale (Health & Saf. Code, § 11378).

Following the granting of the People's motion to consolidate the informations and the denial of defendant's motion to suppress evidence (Pen. Code, § 1538.5), defendant entered a negotiated plea to being an ex-felon in possession of a handgun, to the unlawful transportation of methamphetamine, and to possession of

amphetamine for sale. He also admitted two of the three alleged priors.

Sentenced to state prison, defendant appeals contending: (1) none of the searches can be sustained under the parole search doctrine; and (2) the accelerated booking search was unlawful. We reject these contentions and shall affirm the judgment.

FACTS

On October 16, 1981, at approximately 11 p.m., Deputies William Myers and Terry Moore responded to the residence of Dale Martin. There they were told by Martin that defendant had struck Martin's wife on the head with a .357 caliber revolver while in a local bar. Martin described defendant to the deputies and told them he drove a yellow M.G. and that he frequented the Ivanhoe and Country Squire bars. Martin's brother told Deputy Myers that defendant had served time in prison for possession of

heroin and stolen guns and that he had heard defendant was presently dealing in drugs.

Failing to locate defendant at the two bars, the deputies radioed for additional information from their records section. Lieutenant Easton, who overheard the request, met with the deputies in the field, and informed them defendant had served five years for a drug conviction, that his prior conviction resulted from dealing drugs from the trunk of his car, that he was known to carry a weapon in his waistband, and that he should be on searchable parole.

Around 2 a.m., the deputies saw defendant's M.G. at the Ivanhoe bar. Defendant and a female, later identified as Sally DeLouize, exited the bar and entered a stationwagon parked behind the M.G. Defendant got out of the stationwagon, went to the M.G. and made a motion as though he were removing something from his waistband

and placed it in the M.G. He was then joined by DeLouize in the M.G. After she momentarily returned to the stationwagon, the two drove off in the M.G. with the deputies following.

The deputies stopped the M.G. and conducted a pat down search of defendant but no weapon was found. Defendant and DeLouize were each placed in the back of separate patrol cars. DeLouize gave Deputy Myers permission to obtain her identification from her purse in the car. Inside the purse Myers found a .38 revolver, but he did not believe this to be the weapon used in the assault. Deputy Myers told defendant he was aware that defendant was on searchable parole, which defendant confirmed but refused to give his consent to a search of the car.

Based upon his belief the weapon used in the assault was still missing and due to the information that defendant was dealing drugs from his car, Deputy Myers searched the

M.G. In the trunk he found an ice chest and a black box, each being large enough to contain a gun. Inside the ice chest he found contraband. A search of defendant revealed $260 cash, a small green vial, and a small spoon on a chain.

In early May 1982, Deputy Richard McKee received information that defendant was again dealing in methamphetamine and that he was using an older stationwagon to get the drugs. When McKee gave this information to Agent William Frederick of the Department of Corrections, the latter verified defendant's parole status and requested McKee to assist him in a parole search of defendant's residence.

Prior to the search, which was conducted on May 13, Deputy McKee had on both May 7 and 10 observed a red stationwagon parked in the driveway. At the time of the

search the red stationwagon was parked in front of the residence.

Although a search of the residence disclosed no contraband, a set of keys were discovered in a bedroom used by defendant. When defendant was asked for the keys to the red stationwagon he denied any knowledge about the vehicle other than a Mr. Burdall had left it there the previous night. Agent Frederick discovered that one of the keys fit the red stationwagon, opened it and found drugs beneath the driver's seat.

DISCUSSION

Defendant first contends the roadside search of his person and M.G. on October 17 was unlawful because (1) it was not conducted by his parole agent and the record is unclear as to what his conditions of parole were; and (2) there was insufficient reason to conduct the search even under the theory of a parole search.

Initially we note the well established rule governing motions to suppress evidence under Penal Code section 1538.5: "In such a proceeding the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences, is vested in the trial court. On appeal all presumptions favor the exercise of that power, and the trial court's findings on such matters, whether express or implied, must be upheld if they are supported by substantial evidence." (People v. Lawler (1973) 9 Cal.3d 156, 160.) Moreover, where a parolee is subject to search conditions, a parole search may be founded on "'any report, or suspicion, or belief of continued misconduct' reasonably suggestive of criminal activity and is legal as long as the search is not for the purpose of harassment." (Hernandez v. Superior Court (1980) 110 Cal.App.3d 355, 366.)

Here, defendant admitted to the officers that he was on searchable parole. Defendant's notice of parole containing the conditions of parole was introduced into evidence at the suppression hearing. Under the terms of his parole, defendant and his "residence and any property under [his] control may be searched without a warrant at any time by any agent of the Department of Corrections or any law enforcement officer." (See Cal. Admin. Code, tit. 15, § 2511, subd. (b) 4.)

Relying upon People v. Coffman (1969) 2 Cal.App.3d 681, Hernandez v. Superior Court, supra, 110 Cal.App.3d 355, and People v. Natale (1978) 77 Cal.App.3d 568, defendant argues that none of the searches can be upheld under the parole search doctrine because they were mere pretexts for police activity unrelated to parole supervision. Natale held that when

the conditions of parole do not include a search by any law enforcement officer, the parole officer may not act merely as a "stalking horse" for the police. (77 Cal.App.3d at pp. 573-574.) Since defendant's parole conditions included a condition of search by any law enforcement officer, there is no requirement that the search be conducted by defendant's parole officer. "The purpose of the search, not the physical presence of a parole agent, is the vital element." (People v. Coffman, supra, 2 Cal.App.3d at p. 688.) Coffman condemned a search conducted by a parole agent acting solely as a "front" for the police. But as we later noted, "Coffman is inapposite to a situation where the parolee has agreed to a search by 'any law enforcement officer.'" (Hernandez v. Superior Court, supra, 110 Cal.App.3d at p. 366.) Defendant retorts that he did not consent to a search by any

law enforcement officers. That, as it turns out, is irrelevant. Parole conditions "are not a contract but are the specific rules governing all parolees whether or not the parolee has signed the form containing the parole conditions." (Cal. Admin. Code, tit. 15, § 2512.) As we shall explain, consent to a parole search condition is not a necessary predicate for a valid parole search. The doctrinal foundations of warrantless parole searches were recently reexamined in light of the enactment of the Determinate Sentencing Act (Stats. 1977, ch. 1139), and were found to have continuing validity under the theories of constructive custody and the legitimate demands of the parole process. (People v. Britton (1984) 156 Cal.App.3d 689, 693-697, mod. 157 Cal.App.3d 1228c.) Whether or not the consent theory is still viable, "another theory of justifying warrantless parole searches--

administrative needs of the parole process--retains its validity." (Id., at p. 696.) The searches in this case were reasonable ones justified by the legitimate demands of the parole process. Since the officers had been informed that defendant had committed a felony assault with a gun, and because they were unable to find the gun on defendant's person or in the interior of his car, and because they had also been told that defendant's prior conviction was drug related and that he was presently dealing in drugs, it cannot reasonably be contended that the search of the trunk was made either for the purpose of harassment or without sufficient cause.

Relying on People v. Laiwa (1983) 34 Cal.3d 711, defendant also urges that the vial containing amphetamine found on his person following his arrest must be suppressed as it was the result of a

prohibited "accelerated booking search." The claim is founded upon the following testimony of Officer Myers given in response to questions by the prosecutor: "Q. Did you do a prebooking search at that time? A. Yes. Q. What did you find, if anything? A. A large amount of cash, two hundred sixty some odd dollars, I believe was on his person, and a small green vial with a black lid. . . ."

In Laiwa the arresting officer testified that at the site of the arrest he searched defendant's tote bag "for inventory purposes." (Id., at p. 715.) The Court held that searches at the scene of the arrest made for inventory or jail safety purposes, which it termed "accelerated booking searches" or "booking searches," were unconstitutional. (Id., at pp. 724-728.) While it is true Deputy Myers responded affirmatively when asked if he did a "prebooking search" the use of the term "prebooking search" does not

in-and-of-itself mean he was conducting a search for inventory or jail safety purposes. Unlike the officer in Laiwa, Deputy Myers never expressly testified as to his purpose when he searched defendant; nor was he ever asked. Simply stated the term "prebooking search" does not necessarily mean anything other than a search which preceded the booking of the defendant. Indeed, given that he had just found drugs in the trunk of defendant's car it is obvious that Officer Myers was searching defendant for additional evidence -- a purpose specifically approved in Laiwa. (Id., at p. 727.) The search was lawful.

Defendant also contends the officers impermissibly extended the scope of an otherwise proper search on May 13 by searching the stationwagon in front of his residence. This is so, he argues, because the red stationwagon "turned out to belong to

Ted Berdahl, who was not a cotenant," and defendant had so informed the officers prior to the search. Ownership of the car was not the critical point upon which the validity of the search turned. The point was whether or not the officers had sufficient reason to believe defendant was in "possession" of the vehicle. (Hernandez v. Superior Court, supra, 110 Cal.App.3d at p. 367.) Deputy McKee's testimony that he had seen the vehicle in defendant's driveway on May 7 and 10, and that it was present on May 13 with defendant in possession of car keys was sufficient evidence to establish defendant's possession of the vehicle.

Defendant contends that due to the enactment of the Determinate Sentencing Act parole searches require an administrative warrant. The basis for this extravagant claim is his assertion that the doctrine of custodia legis no longer applies and that the

"Department [of Corrections] and its Board have become [] that common and useful beast of burden: an administrative agency."

Defendant's argument is as follows: Prior to the enactment of the Determinate Sentence Act a parolee was serving the remainder of his sentence outside of prison. After the Determinate Sentence Act became effective parole was no longer a matter of clemency but was imposed as a separate term. "It is thus incorrect to say that the parolee is serving the balance of his prison time 'outside the walls.'" Therefore, so the argument goes, the defendant was not in custodia legis of the Department of Corrections at the time of the searches.

While it is true that the parole period now imposed constitutes a term separate from the original imprisonment (In re Wilson (1981) 30 Cal.3d 438, 442), it is also still true under the Determinate

Sentence Act that "an inmate is not 'discharged from custody' until 'his successful completion of parole . . . .'" In re Caudillo (1980) 26 Cal.3d 623, 636, citing Penal Code section 3000, subdivision (a)). Further, Penal Code section 3056 states: "Prisoners on parole shall remain under the legal custody of the department and shall be subject at any time to be taken back within the enclosure of the prison." In the face of such authority, defendant's contention, that the doctrine of custodia legis is no longer viable must be rejected.

In support of his claim that the Department of Corrections is an administrative agency, therefore requiring an administrative warrant for the search of its parolees, defendant relies on Camara v. Municipal Court (1967) 387 U.S. 523 [18 L.Ed.2d 930], and See v. Seattle (1967) 387 U.S. 541 [18 L.Ed.2d 943]. Camara prohibited

warrantless searches of residences by a governmental agency charged with enforcement of housing code restrictions. See prohibited warrantless searches of businesses for fire safety violations by the Seattle Fire Department. Neither case is on point since the respective defendants in those cases were not parolees subject to reduced expectations of privacy. This same contention was rejected by the Britton court: "The frustration of the purpose of requiring public health inspectors to obtain warrants before searching private residences does not come close to the frustration of purpose which would occur if when performing their duties parole officers were required to obtain search warrants before searching a parolee's residence. The legitimate demands of the parole process (discovery of parole violations, supervision of the parolee, checking the parolee's progress toward

rehabilitation and protection of the public) can best be met by allowing a parole officer to conduct a reasonable parole search without the need of obtaining a warrant." (People v. Britton, supra, 156 Cal.App.3d 696, mod. 157 Cal.App.3d 1228c, 1228d.)

What is on point is Penal Code section 3000, enacted as part of the Determinate Sentence Act, which provides in part: "The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge." As the Britton court noted, a

necessary condition for the carrying out of this mandate is the warrantless parole search.

The judgment is affirmed.

SPARKS, J.

We concur:

EVANS, Acting P.J.

RYAN, J.*

* Assigned by the Chief Justice.

APPENDIX B

California Penal Code section 3000:

The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section. Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3030) of this chapter:

(a) At the expiration of a term of imprisonment of one year and one day, or a

term of imprisonment imposed pursuant to Section 1170, or at the expiration of such term as reduced pursuant to Section 2931, if applicable, the inmate shall be released on parole for a period not exceeding three years, unless the board for good cause waives parole and discharges the inmate from custody of the department.

(b) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the board for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall be also applicable to inmates who committed

crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(c) The board shall consider the request of any inmate regarding the length of his parole and the conditions thereof.

(d) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under subdivision (a) or (b), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and subdivisions (a) and (b) shall be computed from the date of initial parole, or July 1, 1977, whichever is later, and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward such period of parole unless the prisoner is found

not guilty of the parole violation. However, in no case, except as provided in Section 3064, may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his initial parole, and, except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision of in custody for a period longer than seven years from the date of his initial parole.

(e) It is not the intent of this section to diminish resources presently allocated to the Department of Corrections for parole functions.

(f) The Department of Corrections shall meet with each inmate at least 30 days prior to his good time release date, unless such release date is within 30 days of July 1, 1977, and shall provide, under

guidelines specified by the Board of Prison Terms, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the Board of Prison Terms.

* * * * * *

APPENDIX C

California Administrative Code,
Title 15, Section 2510:

The prisoner shall be informed of the length and conditions of parole. The board shall establish and impose the special parole conditions and the length of parole within the statutory maximum for all life prisoners, nonlife 1168 prisoners, and ISL prisoners released on ISL parole dates. Under guidelines specified by the board the department shall establish and impose the special conditions of parole and the length of parole within the statutory maximum for all DSL prisoners and ISL prisoners released on DSL release dates as retroactively calculated. The department shall impose any special conditions recommended by the board for DSL prisoners and ISL prisoners released on DSL release dates.

* * * * * *

APPENDIX D

California Administrative Code,
Title 15, Section 2511:

(a) Definition. The notice of parole is a general description of rules and regulations governing parolees.

(b) Notice. The notice of parole shall read as follows:

1. Release. You will be released on parole effective _____ for a period of _____. This parole is subject to the following notice and conditions. Should you violate any conditions of this parole, you are subject to arrest and the board may modify, suspend, or revoke your parole and/or order your return to custody. You have read or have had read to you these conditions of parole and you fully understand them. Whenever any problems arise or you do not understand what is expected of you, talk to your parole agent.

2. Extradition. You waive extradition to the State of California from any State or Territory of the United States, or from the District of Columbia. You will not contest any effort to return you to the State of California.

3. Psychiatric Return. When the board determines based upon psychiatric reasons, that you pose a danger to yourself or others, the board may, if necessary for treatment, order your placement in a community treatment facility or state prison or may revoke your parole and order you returned to prison for psychiatric treatment.

4. Search. You and your residence and any property under your control may be searched without a warrant at any time by any agent of the Department of Corrections or any law enforcement officer.

5. Detainer. If another jurisdiction has lodged a detainer against

you, you may be released to the custody of that jurisdiction. Should you be released from their custody prior to the expiration of your California parole, or should the detainer not be exercised, you are to immediately contact the nearest Department of Corrections' Parole and Community Services Division Office for instructions concerning reporting to a parole agent.

6. Certificate of Rehabilitation. You have been informed and have received in writing the procedure for obtaining a Certificate of Rehabilitation.

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APPENDIX E

California Administrative Code, Title 15, Section 2512:

The parole conditions are not a contract but the specific rules governing all parolees whether or not the parolee has signed the form containing the parole conditions. A violation of any of these conditions of parole may result in the revocation of parole and the parolee's return to prison. The general conditions of parole shall read as follows:

"1. Special conditions. Any special condition imposed by the department or the board.

"2. Release, Reporting, Residence and Travel. Unless other arrangements are approved in writing, you shall report to your parole agent immediately upon release. You shall not leave the State of California without prior written approval of your parole

agent. You shall inform your parole agent within 72 hours of any change in employment.

"3. Parole Agent Instructions. You shall comply with all instructions of your parole agent. Instructions shall be given to you in writing as soon as possible.

"4. Criminal Conduct. You shall not engage in conduct prohibited by law (state, federal, county, or municipal). Conduct prohibited by law may result in parole revocation even though no conviction occurs.

"5. Weapons. You shall not own, use, have access to, or have under your control: (a) any type of firearm or instrument or device which a reasonable person would believe to be capable of being used as a firearm or any ammunition which could be used in a firearm; (b) any weapon as defined in state or federal statutes or listed in California Penal Code section 12020

or any instrument or device which a reasonable person would believe to be capable of being used as a weapon as defined in Penal Code section 12020; or (c) any knife with a blade longer than two inches, except kitchen knives which must be kept in your residence and knives related to your employment which may be used and carried only in connection with your employment."

* * * * * *

DECLARATION OF SERVICE BY MAIL

Case Name: EVERETT E. ORUM v. THE PEOPLE OF THE STATE OF CALIFORNIA

Court Number: No. 85-769

(Service Pursuant to United States Supreme Court, Rule 28(5)(c)

I declare that I am employed in the County of Sacramento, California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 1515 "K" Street, Suite 511, P.O. Box 944255, Sacramento, California 94244-2550.

On January 16, 1986, I served the attached BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI, in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California, addressed as follows:

Hon. Willfried J. Kramer, Clerk
Court of Appeal
Third Appellate District
914 Capitol Mall
Sacramento, California 95814-4869
(3 copies)

John A. Dougherty
District Attorney
P.O. Box 749
Sacramento, California 95804

Joyce Russell Smith
County Clerk
720-9th Street
Sacramento, California 95814

Service continued

Case Name: EVERETT E. ORUM v. THE PEOPLE OF THE STATE OF CALIFORNIA

Court Number: No. 85-769

Laurence P. Gill, Clerk
California Supreme Court
360 McAllister Street, Room 4050
San Francisco, California 94102

Donald Thomas Bergerson
Attorney at Law
1 Haight Street
San Francisco, California 94102
(3 copies)

I declare under penalty of perjury that all parties required to be served have been served, and the foregoing is true and correct and that this declaration was executed at Sacramento, California, on January 16, 1986.

(Signature)